

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the Proposed Rules Governing  
Reading Preparation, Elementary and Middle  
School Licensure, and Technology-Related  
Licensure for Teachers, Minnesota Rules  
Chapter 8710

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

Administrative Law Judge Barbara L. Neilson conducted a hearing in this rulemaking proceeding commencing at 9:00 a.m. on April 24, 2009, in Conference Center A, Room 14, at the Minnesota Department of Education, 1500 Highway 36 West, Roseville, Minnesota. The hearing continued until everyone present had an opportunity to state his or her views on the rules being proposed by the Board of Teaching (the Board).

The hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act.<sup>1</sup> The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency made after the proposed rules were initially published do not result in the rules' being substantially different from what the agency originally proposed. The rulemaking process also includes a hearing when a sufficient number of persons request one. The hearing is intended to allow the agency and the Administrative Law Judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

Bernard Johnson, Assistant Attorney General, represented the Board at the hearing. The following individuals testified on behalf of the Board in favor of the proposed rules: Karen Balmer, Executive Director, Board of Teaching; Robert Gardner, Teacher, Edina Public Schools; Steve Norlin-Weaver, Administrator, Minneapolis Public Schools; Susan Thomson, Parent Advocate; Deborah Dillon, Faculty Member, University of Minnesota; Cara Hagen, former Higher Education Faculty Member and current TIES Staff Member; Greg Utecht, Technology Director, Lakeville Public Schools; and John Melick, Educator Licensing Director, Minnesota Department of Education. Thirty-four people signed the hearing register.

The Board and the Administrative Law Judge received written comments on the proposed rules prior to the hearing. After the hearing, the Administrative Law Judge kept the administrative record open for an additional twenty calendar days, until May 14,

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<sup>1</sup> Minn. Stat. §§ 14.131 through 14.20.

2009, to allow interested persons and the Board to submit written comments. Thereafter, the record remained open for an additional five business, until May 21, 2009, to allow interested persons and the Board to file a written response to any comments received during the initial comment period.<sup>2</sup> Numerous comments were received during the rulemaking process, and all of the comments received were read and considered. At the request of the Administrative Law Judge, the Board submitted a clarification on June 23, 2009, with respect to the modifications it proposes to make to parts 8710.3000 and 8710.3200.

## **NOTICE**

The Board must make this Report available for review by anyone who wishes to review it for at least five working days before the Board takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the Board makes changes in the rules other than those recommended in this report, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Board must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Board, and the Board will notify those persons who requested to be informed of their filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

### **Nature of the Proposed Rules**

1. The Minnesota Board of Teaching is responsible for teacher preparation and licensure requirements in the state. In this rulemaking proceeding, the Board proposes to revise 21 of the existing licensure rules set forth in Chapter 8710 of the Minnesota Rules, add seven new rule provisions, and repeal one rule. It also has proposed several technical changes to the existing rules. Three broad initiative areas are reflected in the proposed rules: middle level licensure, reading preparation, and technology-related licensure.<sup>3</sup>

2. Among other things, the proposed amendments would extract the current specialty requirement from the K-6 license; include the content and pedagogy standards for each of the newly-developed middle level endorsement licensure areas in a single rule; require completion of the equivalent of a college minor in the content area; require completion of a 4-week full-time student teaching experience in the content area in grades 5-8; propose new standards for reading preparation with respect to teachers of early childhood education, teachers of elementary education, and content-specific licenses; create a new "Reading Leader" endorsement; revise the scope of practice and

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<sup>2</sup> See Minn. Stat. § 14.15, subd. 1.

<sup>3</sup> SONAR at 1-2, 8.

subject matter standards relating to Library Media Specialists; and require that all teachers include in their 125-clock hours instruction or other professional development activities that integrate technology effectively with student learning to increase engagement and student achievement. The most controversial portion of the proposed rules involves changes in the endorsement for “Teachers of Keyboarding for Computer Applications.” The proposed rules would change the name of this endorsement to “Teachers of Computer, Keyboarding, and Related Technology Applications” and would expand the scope of the endorsement from grades K-8 to grades K-12. These changes would be effective September 1, 2010.

### **Rulemaking Legal Standards**

3. Under Minnesota law, one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts.<sup>4</sup> In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.<sup>5</sup> The Board prepared a Statement of Need and Reasonableness (SONAR) in support of its proposed rules. At the hearing, the Board primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed rules. The SONAR was supplemented by comments made by staff and witnesses who spoke on behalf of the Board at the public hearing, and by the Board’s written post-hearing submissions.

4. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.<sup>6</sup> Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.<sup>7</sup> A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.<sup>8</sup> The Minnesota Supreme Court has further defined an agency’s burden in adopting rules by requiring it to “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”<sup>9</sup>

5. Reasonable minds might be divided about the wisdom of a certain course of action. An agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the “best” approach, since this would invade

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<sup>4</sup> Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100.

<sup>5</sup> *Mammenga v. Dept. of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

<sup>6</sup> *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

<sup>7</sup> *Greenhill v. Bailey*, 519 F.2d 5, 19 (8<sup>th</sup> Cir. 1975).

<sup>8</sup> *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem’l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

<sup>9</sup> *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.

the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.<sup>10</sup>

6. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the Board complied with the rule adoption procedure, whether the proposed rules grant undue discretion, whether the Board has statutory authority to adopt the rules, whether the rules are unconstitutional or illegal, whether the rules involve an undue delegation of authority to another entity, or whether the proposed language is not a rule.<sup>11</sup>

7. Because the Board suggested changes to the proposed rules after original publication of the rule language in the State Register, it is also necessary for the Administrative Law Judge to determine if the new language is substantially different from that which was originally proposed. The standards to determine whether changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if the differences are within the scope of the matter announced in the notice of hearing and are in character with the issues raised in that notice; the differences are a logical outgrowth of the contents of the notice of hearing, and the comments submitted in response to the notice; and the notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.<sup>12</sup>

8. In reaching a determination regarding whether modifications result in a rule that is substantially different, the Administrative Law Judge is to consider whether persons who will be affected by the rule should have understood that the rulemaking proceeding could affect their interests; whether the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of hearing; and whether the effects of the rule differ from the effects of the proposed rule contained in the notice of hearing.<sup>13</sup>

## **Procedural Requirements of Chapter 14**

9. The Minnesota Administrative Procedures Act<sup>14</sup> and the rules of the Office of Administrative Hearings<sup>15</sup> set forth certain procedural requirements that are to be followed during agency rulemaking.

10. On September 15, 2008, the Board published in the State Register a Request for Comments on Possible Rules Governing Reading Preparation, Elementary and Middle School Licensure, and Technology-Related Licensure for Teachers, Minnesota Rules, Chapter 8710.<sup>16</sup>

11. As required by Minn. Stat. § 14.131, the Board asked the Commissioner of Finance to evaluate the fiscal impact and benefits of the proposed rules on local units of

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<sup>10</sup> *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

<sup>11</sup> Minn. R. 1400.2100.

<sup>12</sup> Minn. Stat. §14.05, subd. 2(b).

<sup>13</sup> Minn. Stat. § 14.05, subd. 2(c).

<sup>14</sup> The provisions of the Act relating to agency rulemaking are codified in Minn. Stat. §§ 14.001-14.47.

<sup>15</sup> The OAH rules governing rulemaking proceedings are set forth in Minnesota Rules part 1400.2000 through 1400.2240.

<sup>16</sup> Ex. H (33 State Reg. 518 (Sept. 15, 2008)).

government. The Department of Management & Budget provided comments in a memorandum dated December 22, 2008.<sup>17</sup>

12. On January 7, 2009, Chief Administrative Law Judge Raymond R. Krause authorized the Board to omit the text of its proposed rules from publication in the State Register pursuant to Minn. Stat. § 14.22, subd. 1(b).<sup>18</sup>

13. On February 25, 2009, the Board filed copies of the proposed Dual Notice of Hearing, proposed rules, and draft Statement of Need and Reasonableness (SONAR) with the Office of Administrative Hearings. The Dual Notice indicated that, if the Department received 25 or more requests for a hearing, the hearing would occur on April 24, 2009. The filings complied with Minn. R. 1400.2080, subp. 5. By letter dated March 4, 2009, the Administrative Law Judge approved the Dual Notice.<sup>19</sup>

14. On March 9, 2009, the Board notified the Administrative Law Judge that it had definitely decided to proceed with a hearing on the proposed rules and requested approval of a Notice of Hearing. By letter dated March 10, 2009, the Administrative Law Judge approved the Notice of Hearing.<sup>20</sup>

15. On March 16, 2009, the Board published the Notice of Hearing in the State Register<sup>21</sup> and mailed the Notice of Hearing to all persons on its Rulemaking List and Additional Notice Plan mailing list.<sup>22</sup>

16. On March 19, 2009, the Board electronically mailed the Notice of Hearing to all persons on its interested parties and board member electronic mailing list.<sup>23</sup>

17. The hearing on the proposed rules was held on April 24, 2009, at the Department of Education in Roseville, Minnesota. At the hearing, the Board placed the following documents in the record:

A. the Request for Comments as published in the State Register on September 15, 2008 (33 State Reg. 518);<sup>24</sup>

B. a copy of the proposed rules dated February 19, 2009, including the Revisor's approval;<sup>25</sup>

C. a copy of a memorandum from Kristy Swanson, Executive Budget Officer for Minnesota Management & Budget, regarding the fiscal impact and benefits of the proposed rules with respect to local governments;<sup>26</sup>

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<sup>17</sup> Exs. Q, U.

<sup>18</sup> Ex. W.

<sup>19</sup> Exs. Y, Z.

<sup>20</sup> Exs. AA, BB.

<sup>21</sup> Ex. CC (33 State Reg. 1565 (March 16, 2009)).

<sup>22</sup> Exs. FF-HH.

<sup>23</sup> Ex. 11.

<sup>24</sup> Ex. H.

<sup>25</sup> Ex. X.

<sup>26</sup> Ex. U.

- D. a copy of the SONAR;<sup>27</sup>
- E. a copy of the transmittal letter showing that the Board mailed a copy of the SONAR to the Legislative Reference Library on March 19, 2009;<sup>28</sup>
- F. a letter from Chief Administrative Law Judge Raymond R. Krause authorizing omission of the text of the proposed rule from the published dual notice;<sup>29</sup>
- G. the Notice of Hearing as mailed and published in the State Register on March 16, 2009 (33 State Reg. 1565);<sup>30</sup>
- H. a Certificate attesting that the Notice of Hearing was submitted for inclusion in the Department of Education's March 13, 2009, email sent to all superintendents of schools;<sup>31</sup>
- I. a Certificate attesting that the Notice of Hearing was mailed to those on the Board's rulemaking mailing list on March 16, 2009 and a Certificate attesting that the rulemaking mailing list was accurate, complete, and current as of that date;<sup>32</sup>
- J. a Certificate attesting that the Notice of Hearing was mailed to certain members of the Legislature on March 16, 2009;<sup>33</sup>
- K. Certificates attesting that the Notice of Hearing was emailed on March 16, 2009, to the Dean/Chairs of Minnesota Teacher Preparation Institutions, all persons and associations on the Professional Organizations list, and all individuals commenting or requesting a hearing following the Request for Comments;<sup>34</sup>
- L. a Certificate attesting that the Notice of Hearing was emailed in accordance with the Additional Notice Plan on March 16, 2009;<sup>35</sup>
- M. a Certificate attesting that the Notice of Hearing was emailed to participants in the 2007 middle level stakeholder meetings on March 16, 2009;<sup>36</sup>
- N. a Certificate attesting that the Notice of Hearing was provided to Continuing Education Committee Members,

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<sup>27</sup> Ex. S.

<sup>28</sup> Ex. DD.

<sup>29</sup> Ex. W.

<sup>30</sup> Ex. CC.

<sup>31</sup> Ex. HH.

<sup>32</sup> Ex. HH.

<sup>33</sup> Ex. HH.

<sup>34</sup> Exs. GG, HH.

<sup>35</sup> Ex. FF.

<sup>36</sup> Ex. GG.

Superintendents, Charter School Directors, Principals, and Local Central Office Staff Members on March 26, 2009;<sup>37</sup>

O. copies of comments and hearing requests received from members of the public during the comment period;<sup>38</sup> and

P. copies of comments received from members of the public after the comment period ended but before the public hearing.<sup>39</sup>

18. The Administrative Law Judge finds that the Board has met all of the procedural requirements under applicable law and rules.

### **Additional Notice**

19. Minn. Stat. §§ 14.131 and 14.23 require that the SONAR contain a description of the Board's efforts to provide additional notice to persons who may be affected by the proposed rules. The Board submitted an additional notice plan to the Office of Administrative Hearings, which reviewed and approved it by letter dated September 2, 2008. In addition to notifying persons on the rulemaking mailing list maintained by the Board of Teaching, the Board represented that it would send the Dual Notice to all critical stakeholder groups which would have wide access to individuals across the state who many have an interest or concern relating to the proposed rules, as well as school districts, charter schools, teacher preparation programs, and statewide Minnesota education organizations. It further indicated that public access would be provided through the internet or in response to requests made by phone, fax, mail, or in person. During the rulemaking hearing, the Board introduced evidence that certified the provision of notice to those on the rulemaking list maintained by the Board and in accordance with its additional notice plan.<sup>40</sup>

20. The Board took action to inform the following interested and affected parties and associations of this rulemaking process:

- members of the three task forces that worked on the proposed rules;
- additional reading stakeholders, including the Minnesota Reading License Coalition, Minnesota Academy of Reading, Minnesota Reading Association, Minnesota and International Dyslexia Associations, Reading Center/Dyslexia Institute of Minnesota, Language Circle/Project Read, Minnesota Literacy Council, PACER Center, ARC, Title I, Literacy Coalition of Minnesota, Parent Advocacy Group, Groves Academy, Minnesota Response to Intervention Center, Minnesota Reading Corps, St. Croix River Educational District, Orton Gillingham Minnesota, Winsor Learning, Inc., and Lindamood Bell Learning Center;

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<sup>37</sup> Exs. FF, GG.

<sup>38</sup> Exs. M-P.

<sup>39</sup> Ex. JJ.

<sup>40</sup> Exs. I-K, FF-HH.

- additional technology stakeholders, such as Minnesota Business Educators, Inc., Minnesota Educational Media Organization, Perpich Center for Arts Education, and Technology Information Education Services;
- all superintendents of schools;
- all deans/chairs of teacher preparation institutions;
- the President of the Minnesota Middle School Association;
- content area organizations, such as the Minnesota Association for the Education of Young Children, Minnesota Association for Agricultural Educators, Minnesota Association of Family and Consumer Sciences, Minnesota Association of Health, Physical Education, Recreation, and Dance, Minnesota Business Educators, Inc., Minnesota Council for Teachers of English, Minnesota Educational Media Organization, Minnesota Middle School Association, Minnesota Council for Social Studies, Minnesota Council of Teachers of Mathematics, Minnesota Science Teachers Association, Minnesota Technology Education Association, MinneTesol, Perpich Center for Arts Education, and Literacy Minnesota;
- general stakeholders, such as the Association of Metropolitan School Districts, Board of School Administrators, Education Minnesota, Minneapolis Public Schools, St. Paul Public Schools, Minnesota Association of School Personnel Administrators, Minnesota Human Resource Directors, Interfaculty Organization, Minnesota Association of Colleges of Teacher Education, Minnesota Association of Alternative Programs, Minnesota Association of School Administrators, Minnesota Elementary School Principals Association, Minnesota Middle School Association, the Minnesota Association of Secondary School Principals, Minnesota Association of Charter Schools, Minnesota Department of Education, Minnesota Rural Education Association, Minnesota School Boards Association, Minnesota Staff Development Council, Minnesota Independent School Forum, Minnesota State Colleges and Universities, Minnesota Administrators for Special Education, Minneapolis Parents United, and Schools for Equity in Education; and
- others who specifically requested notice.<sup>41</sup>

21. Copies of the proposed rules, SONAR, and Dual Notice were also posted on the Board's website.<sup>42</sup>

22. The Administrative Law Judge finds that the Board has fulfilled its additional notice requirement.

### **Statutory Authority**

23. In its SONAR, the Board asserts that its statutory authority to adopt rules these proposed rules is set forth in Minn. Stat. § 122A.09, subs. 4 and 9.<sup>43</sup> Subdivision

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<sup>41</sup> SONAR at 2.

<sup>42</sup> Ex. EE.

4 states that the Board “must adopt rules to license public school teachers and interns subject to chapter 14.” Subdivision 9 specifies that the Board “may adopt rules subject to the provisions of chapter 14 to implement sections 122A.05 to 122A.09, 122A.16, 122A.17, 122A.18, 122A.20, 122A.21, and 122A.23.” Among other things, these statutes give the Board broad authority to license public school teachers, impose licensure fees, adopt ethical codes, and design teacher preparation programs.

24. Minn. Stat. § 14.125 sets certain time limits on the exercise of rulemaking authority:

An agency shall publish a notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. If the notice is not published within the time limit imposed by this section, the authority for the rules expires. The agency shall not use other law in existence at the time of the expiration of rulemaking authority under this section as authority to adopt, amend, or repeal these rules.

An agency that publishes a notice of intent to adopt rules or a notice of hearing within the time limit specified in this section may subsequently amend or repeal the rules without additional legislative authorization.

Minn. Stat. § 14.125 was enacted in 1995 and only “applies to laws authorizing or requiring rulemaking that are finally enacted after January 1, 1996.” The Legislature originally granted rulemaking authority to what was then called the Teacher Standards and Certification Commission in 1973.<sup>44</sup> The name of the agency was changed to the Board of Teaching in 1976.<sup>45</sup> Because the statute authorizing the Board to adopt rules governing the licensure of teachers was enacted long before the date on which Minn. Stat. § 14.125 became effective, Minn. Stat. § 14.125 does not apply here.

25. The Administrative Law Judge concludes that the Board has general statutory authority under Minn. Stat. § 122A.09, subds. 4 and 9, to adopt rules relating to the licensure of teachers.

### **Impact on Farming Operations**

26. Minn. Stat. § 14.111 imposes an additional requirement calling for notification to be provided to the Commissioner of Agriculture when rules are proposed that affect farming operations. In addition, where proposed rules affect farming operations, Minn. Stat. § 14.14, subd. 1b, requires that at least one public hearing be conducted in an agricultural area of the state.

27. There is no evidence that the proposed rules affect farming operations. Accordingly, the Administrative Law Judge concludes that the Board was not required to notify the Commissioner of Agriculture.

### **Regulatory Analysis in the SONAR**

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<sup>43</sup> SONAR at 2.

<sup>44</sup> 1973 Laws of Minnesota, Chapter 749, Section 11 (effective July 1, 1973).

<sup>45</sup> 1976 Laws of Minnesota, Chapter 222, Sections 25 and 27 (effective July 1, 1976).

28. Minn. Stat. § 14.131 requires an agency adopting rules to consider seven factors in its Statement of Need and Reasonableness. Each of these factors, and the Board's analysis, are discussed below.

29. The first factor requires "a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule." In its SONAR, the Board identified the classes of persons who will be affected by the proposed rules as new teacher candidates, who will be held to the standards set forth in the proposed rules; higher education institutions that prepare teachers, which will be required to embed the standards and requirements set forth in the proposed rules; already-licensed teachers, who will need to satisfy the additional requirement for renewal set forth in proposed rule part 8710.7200 and will need to meet the standards set forth in the proposed rules if they wish to add a licensure field or an endorsement; and Minnesota students, who will be served by teachers who have met the standards contained in the proposed rules. The Board indicated that higher education institutions would likely incur costs in terms of faculty time and funding in order to embed and implement changes required by the proposed rules. Finally, the Board noted that teacher candidates and Minnesota students would benefit from the preparation and consistency required by the proposed rules, particularly in the area of reading.<sup>46</sup>

30. The second factor requires consideration of "the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues." In the SONAR, the Board noted that it may incur marginal costs in connection with reviewing and aligning licensure tests to meet the new standards but stated that its contracted testing vendor would cover the vast majority of these costs. The Board indicated that the proposed rules would not affect the staffing or resource allocation of the Educator Licensing Division of the Minnesota Department of Education, which will continue to issue licenses, and no effect on state revenues was anticipated.<sup>47</sup>

31. The third factor requires "a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule." The Board stated in the SONAR that there were no less costly or less intrusive methods available to bring about the proposed changes other than rulemaking by the Board.<sup>48</sup>

32. The fourth factor requires "a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule." The Board noted in its SONAR that it relied heavily on participation and input from stakeholders in each of the three areas encompassed by the proposed rules, and stated that the rule-by-rule analysis contained in the SONAR provides additional information regarding each area and the options that were considered.<sup>49</sup>

33. The fifth factor specifies that the agency must assess "the probable costs of complying with the proposed rule, including the portion of the total costs that will be

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<sup>46</sup> SONAR at 3.

<sup>47</sup> SONAR at 3.

<sup>48</sup> SONAR at 4.

<sup>49</sup> SONAR at 4.

borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.” The Board indicated in the SONAR that the proposed rules should not have an impact on costs incurred by teacher candidates, who already pay for coursework to meet the licensure requirements established by the Board. The Board acknowledged that higher education institutions would need to devote faculty time and resources to embed and implement the changes required by the proposed rules, and already-licensed teachers may have to pay for workshops or coursework to fulfill the additional requirement for licensure renewal. The Board also noted in the SONAR that teachers adding a licensure field or endorsement will have to pay for coursework to meet the licensure requirements, but indicated that the proposed rules should not have an impact of these costs.<sup>50</sup>

34. The sixth factor requires a description of “the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.” In the SONAR, the Board noted that it had been faced in recent years with unresolved policy issues and challenges in each of the three areas encompassed by the rules (technology, middle level, and reading), and indicated that it had determined that resolution was necessary. Moreover, with respect to the reading requirements, the Board indicated that heightened national and state attention to reading preparation made it likely that legislative action would have been taken if the Board had failed to move forward with proposed rules.

35. The seventh and final factor requires “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.” In the SONAR, the Board noted that federal regulations are not a consideration because teacher preparation and licensure requirements are entrusted to each individual state.<sup>51</sup>

36. The Administrative Law Judge finds that the Board adequately considered the regulatory factors required by Minn. Stat. § 14.131.

### **Performance-Based Regulation**

37. The Administrative Procedure Act also requires that an agency describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002.<sup>52</sup> A performance-based rule is one that emphasizes superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.<sup>53</sup>

38. In its SONAR, the Board indicated that, in developing the proposed rules, it considered and implemented performance-based standards that emphasize superior achievement in meeting the Board’s regulatory objectives. It stated that the proposed rules were developed by stakeholders with a broad diversity of experience and

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<sup>50</sup> SONAR at 4-5.

<sup>51</sup> SONAR at 5.

<sup>52</sup> Minn. Stat. § 14.131.

<sup>53</sup> Minn. Stat. § 14.002.

knowledge, and asserted that the rules will ensure that teachers licensed in Minnesota are well prepared to meet the needs of their students.<sup>54</sup>

39. The Administrative Law Judge finds that the Board has met the requirements set forth in § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

### **Consultation with the Commissioner of Finance**

40. Under Minn. Stat. § 14.131, the Agency is also required to “consult with the commissioner of finance to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.”

41. As required, the Board consulted with the Commissioner of Finance. In a response dated December 22, 2008, Executive Budget Officer Kristy Swanson of Minnesota Management and Budget determined that higher education institutions are the primary stakeholders financially affected by the proposed rules since faculty time would be involved in embedding and implementing changes. She further noted that there would be a modest cost to local units of government to the extent that school districts choose to reimburse current teachers for the cost associated with meeting the additional requirement for license renewal. Ms. Swanson concluded that the proposed rules “will have little fiscal impact on local units of government.”<sup>55</sup>

42. The Administrative Law Judge finds that the Board has met the requirements set forth in Minn. Stat. § 14.131 for consulting with the Commissioner of Finance.

### **Compliance Costs for Small Businesses and Cities**

43. Under Minn. Stat. § 14.127, the Board must “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The Board must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.

44. In the SONAR, the Board stated that it has determined that the cost of complying with the proposed rules in the first year after they take effect will not exceed \$25,000 for any small business or small city.<sup>56</sup>

45. The Administrative Law Judge finds that the Board has made the determination required by Minn. Stat. § 14.127, subd. 1, and approves its determination that costs of compliance for small businesses and cities will not exceed the cost threshold established by that statute.

### **Analysis of the Proposed Rules**

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<sup>54</sup> SONAR at 6.

<sup>55</sup> SONAR at 7-8; Ex. U.

<sup>56</sup> SONAR at 8.

46. This Report is limited to discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined; it will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that all comments, including those made prior to the hearing, have been carefully read and considered. Moreover, because sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary.

47. The proposed rules primarily involve three subjects, which at times overlap: middle level licensure requirements, reading preparation for teachers, and technology-related licensure requirements. The most controversial aspect of the proposed rules is the technology-related licensure provisions. The Board convened task forces in each of those three areas and solicited input in drafting the proposed rules. The discussion below focuses on each of the three areas.

48. The Administrative Law Judge finds that the Board has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of all rule provisions not specifically discussed in this Report. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

## **I. Middle Level Licensure Proposals**

### **Part 8710.3200 – Teachers of Elementary Education**

49. Part 8710.3200 defines the scope of practice, licensure requirements, and subject matter standards for elementary teachers. Under the rule that currently is in effect, all K-6 candidates must earn a license in one of six specialty areas in addition to their K-6 license. The six specialty areas are Preprimary Children (age three and above), K-8 World Language and Culture, 5-8 Mathematics, 5-8 Communication Arts and Literature, 5-8 Social Studies, and 5-8 General Science.<sup>57</sup> The proposed rules would drop the specialty area requirement and make the K-6 license a stand-alone license. The proposed elementary education rule would also add a new student-teaching requirement to the portion of the rule relating to subject matter standards for elementary education. The proposal would specify that candidates must “apply the standards of effective practice in teaching students in kindergarten through grade 6 through a minimum of ten weeks of full-time student teaching.”<sup>58</sup>

50. In the SONAR, the Board noted that the specialty area requirement has been problematic because it has caused the preparation of K-6 teachers to become too broad and provides them with insufficient time to gain in-depth knowledge of critical areas such as special education, reading instruction, and the needs of English language learners. In addition, practical problems have arisen in connection with the existing requirement. For example, some Minnesota candidates have been unable to pass the specialty area test. The Board has passed resolutions since 2004 allowing such individuals to continue to teach in a K-6 setting on a one-year limited license basis. In 2008, the Board authorized another resolution to allow individuals to remain in the K-6

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<sup>57</sup> See Minn. R. 8710.3200, subp. 1 (A) – (C); SONAR at 9.

<sup>58</sup> See subpart 3(A)(7) of the proposed rule.

setting despite this failure. In addition, the Board has passed resolutions since 2003 waiving the specialty area requirement for out-of-state teacher applicants, rather than compel them to take additional coursework to meet the requirement. The Board believes that removing the specialty requirement from the current rule is needed and reasonable and will allow for stronger preparation of Minnesota K-6 teachers.<sup>59</sup>

51. John Melick, Director of Educator Licensing at the Minnesota Department of Education, testified that the Department of Education supported the Board's proposal to allow a teacher to earn a stand-alone Elementary Education license, noting that teacher preparation programs have reported that there is not enough time to effectively deliver all licensure standards in both Elementary Education and a specialty area, and teachers licensed in this manner who enter middle school teaching positions are not as fully prepared to teach middle school students as they should be.<sup>60</sup>

52. Robert Gardner, a teacher in the Edina Public Schools and one of the Education Minnesota representatives on the 5-8 task force that considered elementary and middle school licensure issues, testified in support of discontinuing the requirement that elementary teachers obtain a specialty license. He noted that elimination of the specialty requirement will allow teacher candidates to concentrate their focus on grades K-6 and study the content and pedagogy of these grades at a deeper level, and thereby become better elementary teachers. In addition, Mr. Gardner indicated that the modification to the rules will end the unfair advantage afforded out-of-state candidates who have not been required to meet the specialty requirements.<sup>61</sup>

53. Deanna Hanks, an elementary school teacher, also supported the proposal to drop the specialty requirement. She recounted difficulties and concerns with the math specialty test, and noted that she never wanted a license for middle school in any specialty area. In her view, the math specialty license has nothing to do with her ability to excel as an elementary school teacher.<sup>62</sup>

54. The Minnesota School Boards Association generally opposed changing the existing licensing structure, but did not amplify on the reasons for its opposition to the proposed changes to the elementary education licensure requirements in particular. No one else objected to the proposed modification. If the proposed rules are adopted, the MSBA asked the Board to clarify whether an elementary teacher with a middle level specialty would still be allowed to teach in the specialty area, or whether he or she would need to go back to school to get one of the new endorsements. The Board responded that, when licensure rules are changed, its practice has been to continue to recognize existing licenses and allow them to be renewed. Thus, teachers who are already licensed would not be required to meet the new standards.<sup>63</sup>

55. The Administrative Law Judge finds that the Board has demonstrated the need for and reasonableness of the proposed deletion of the specialty area requirement and addition of the student teaching requirement to part 8710.3200. It is noted that subpart 6 of the proposed rules states that the requirements of part 8710.3200 “for

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<sup>59</sup> SONAR at 9-13.

<sup>60</sup> Testimony of J. Melick; Ex. TT.

<sup>61</sup> Testimony of R. Gardner; Ex. NN.

<sup>62</sup> Testimony of D. Hanks; Public Ex. 4.

<sup>63</sup> Board's May 21, 2009, Post-Hearing Submission at 2.

licensure as a teacher of elementary education *with a specialty* are effective on September 1, 2010, and thereafter.”<sup>64</sup> The Administrative Law Judge recommends that the Board consider deleting the phrase “with a specialty” from that subpart of the proposed rules. Such a modification would clarify subpart 6 and make it consistent with the other proposed changes dropping the specialty area requirement. The suggested modification would not render the rule substantially different from the rule as originally proposed.

56. A number of requirements are proposed to be added to subpart 3 of the elementary education rule relating to reading preparation requirements. These proposed requirements, which are set forth in subpart 3(C) – (G) of the proposed rule, will be discussed in further detail in Section II of this Report.

**Part 8710.3300 - Middle Level Licensure in Academic Specialty (proposed to be repealed)**

**Part 8710.3310 – Middle Level Endorsement License for Teachers of Communication Arts and Literature**

**Part 8710.3320 – Middle Level Endorsement License for Teachers of Mathematics**

**Part 8710.3330 – Middle Level Endorsement License for Teachers of Social Studies**

**Part 8710.3340 – Middle Level Endorsement License for Teachers of General Science**

57. Current rule 8710.3300 sets forth the scope of practice, licensure requirements, and general subject matter standards for middle level teachers. The specific content standards for particular subjects are found in other portions of the existing rules.<sup>65</sup> In this rulemaking proceeding, the Board proposes to repeal 8710.3300 and instead adopt four separate rules (parts 8710.3310, .3320, .3330 and .3340) governing each of the newly-developed middle level endorsement licensure areas: communication arts and literature, mathematics, social studies, and general science. The requirements would take effect on September 1, 2010. Each of these proposed rules includes standard language regarding the scope of practice, licensure requirements, and pedagogy standards, as well as the content-specific language currently required in the rules. In the SONAR, the Board indicated that it believes that the rules will be more understandable if one rule applies to each area rather than having the content and pedagogy standards set forth in separate rule provisions.<sup>66</sup>

58. Each of the four proposed rules includes two new requirements: First, the candidates for each endorsement must “demonstrate completion of the equivalent of a college minor” in the content area. In the SONAR, the Board indicated that this change was proposed in order to strengthen the depth of preparation for middle level teachers in the content area they wish to teach, in accordance with recommendations received from stakeholders and participants in the task force. The Board indicated that it

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<sup>64</sup> Emphasis added.

<sup>65</sup> For example, subject matter standards for mathematics, social studies, and communication arts and literature are found in 8710.3200, and subject matter standards for science are set forth in 8710.4750.

<sup>66</sup> SONAR at 14.

recognizes that minors may not be offered by colleges in some of the areas, such as social studies, and that is the reason why it referred in the rule to the need to have the “equivalent of a minor.” It stated that institutions that offer one or more of the endorsement licenses will need to submit their plans to the Board for program approval as required by Minnesota Rules part 8700.7600 and, at that time, the Board will review the coursework and materials submitted and decide whether it meets the pedagogy and content standards. The Board contends that this does not afford the Board undue discretion. It noted that the use of minors is a well-established practice on college campuses and asserted that the range of 15-20 credits is generally acceptable as appropriate for earning a minor. The Board further indicated that it “would not seek to create a new standard or definition of a minor, but would rely on the current practices of institutions.”<sup>67</sup>

59. Second, the proposed rules require that the candidates for each endorsement must complete a minimum of a four-week full-time student teaching experience in the content area in grades 5-8. According to the SONAR, this requirement was included in order to ensure that candidates have significant experience with middle level learners and their unique needs. In the Board’s view, the proposed student teaching requirement will clarify the clinical experience requirement, improve consistency across preparation programs, and ensure that candidates obtain a greater depth of preparation.<sup>68</sup>

60. Steve Norlin-Weaver, a middle school principal and past president of the Minnesota Middle School Association who participated on the task force, testified in support of the proposed requirements relating to student teaching and completion of the equivalent of a minor. He asserted that these provisions will ensure that teachers have the necessary skills and knowledge and result in benefit to middle level students. Robert Gardner, another task force member, also supported these requirements because he believes they will lead to a stronger corps of middle school teachers as well as increased student achievement.<sup>69</sup>

61. The Minnesota Department of Education also expressed support for the proposed requirements relating to student teaching and completion of the equivalent of a minor. The Department stated that the modification will require colleges to address the lack of preparation that candidates for the middle school endorsement receive.<sup>70</sup>

62. Sandra Gundlach, Director of Management Services for the Minnesota School Boards Association, submitted a written comment noting that the MSBA generally opposes the proposal to change the existing licensure structure for middle-level teachers. She indicated that adoption of the proposal would likely cause problems for smaller, rural school districts and a growing number of larger districts who need flexibility to staff their programs. The MSBA believes that the proposed rules would not have a positive impact on a school district’s ability to hire new teachers in areas requiring middle-level licensure. The MSBA also asked the Board to clarify how the licensure changes would affect existing teachers; for example, the MSBA wondered

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<sup>67</sup> SONAR at 15-16.

<sup>68</sup> SONAR at 16.

<sup>69</sup> Testimony of R. Gardner and S. Norlin-Weaver; Exs. NN and OO.

<sup>70</sup> Testimony of J. Melick; Ex. TT.

whether the previously-licensed teachers in any of the areas would be “grandfathered in.”

63. In its final post-hearing submission, the Board stated that, when licensure rules are changed, its practice has been to continue to recognize existing licenses and allow them to be renewed. Accordingly, teachers who are already licensed would not be required to meet the new standards. However, the Board noted that all teachers would have to meet the new clock hour requirement for license renewal.<sup>71</sup>

64. The Administrative Law Judge finds that the Board has adequately demonstrated that the repeal of part 8710.3300 and adoption of proposed rule parts 8710.3310 – 8710.3340 are needed and reasonable to ensure that candidates receive adequate exposure to middle level learners prior to licensure and a sufficiently strong foundation in the content area they wish to teach.

65. Subpart 3(D) of each of the four proposed rules adds new language relating to reading preparation in each content area. These modifications will be discussed in further detail in Section II below.

**Part 8710.3350 - Preprimary Endorsement License**

**Part 8710.3360 - Kindergarten through Grade 8 World Language and Culture Endorsement License**

66. The Board indicated in the SONAR that it convened stakeholder groups in the preprimary and world language and culture areas for brief discussion prior to proposing these rules and stakeholders recommended substantial changes. The Board noted that it may undertake a more concentrated review of these areas in the future. In the meantime, the Board stated that it had decided to maintain both fields as endorsement options, and had incorporated existing standards and requirements for these two endorsements in proposed rules parts 8710.3350 and 8710.3360 as a “placeholder.”<sup>72</sup> No one objected to the Board’s approach.

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<sup>71</sup> Board’s May 21, 2009, Submission at 2.

<sup>72</sup> SONAR at 16.

## **II. Reading Preparation Requirements**

67. In January 2007, the Board of Teaching convened a task force to perform a comprehensive analysis of reading instruction in Minnesota. This action was prompted by issues relating to a licensure test for the current reading endorsement and heightened national attention on reading preparation for teachers. After considering the recommendations of the task force, the Board proposed several revisions in its rules.

68. The proposed reading standards fall into three main areas: early childhood education and elementary education; content-specific licensure fields; and reading endorsements. Each of these three subjects will be discussed in turn below.

### **A. Early Childhood Education and Elementary Education**

#### **Part 8710.3000 - Teachers of Early Childhood Education**

#### **Part 8710.3200 - Teachers of Elementary Education**

69. In this rulemaking proceeding, the Board proposes to delete the existing language in each of the above rules relating to reading preparation, and substitute new language. The Early Childhood license extends from birth through grade 3, and the Elementary Education license covers kindergarten through grade 6. The Board indicated in the SONAR that research and literature suggests that students who are not reading at grade level by the end of grade 3 face a significantly greater risk of falling further behind academically and not completing a full K-12 education. Thus, the Board believes that teachers of children through grade 3 play a critical role in ensuring that children are able to read and in initiating assessments and interventions when children are struggling. Accordingly, the proposed rule changes are identical for both Elementary and Early Childhood licenses.

70. With respect to the Elementary Education rule, the SONAR emphasizes that, because the proposed rules eliminate the specialty requirement, additional time will be available to devote to reading preparation.<sup>73</sup> The standards contained in the proposed rules apply only to candidates for licensure and do not impose any requirement on already-licensed teachers, who can continue to seek license renewal without undergoing further training in reading.<sup>74</sup>

71. At the hearing, the Board indicated that it wished to propose a change in the formatting of the portions of the proposed Early Childhood and Elementary Education rules addressing reading preparation requirements (subpart 3(E) – (I) of the Early Childhood rule and subpart 3 (C) – (G) of the Elementary Education rule). The Board believes that the formatting changes will make the standards more user-friendly and will better align to the existing rule text. The Board provided copies of the proposed modifications during the hearing.<sup>75</sup> Upon review of the proposed modification, the Administrative Law Judge noticed typographical errors in the lettered items referenced in the early childhood education rule and questioned why conjunctions and punctuation had been removed from the provisions of both of the proposed rules. At the request of the Administrative Law Judge, the Board submitted a revised version of the

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<sup>73</sup> SONAR at 21; see also Board's May 21, 2009, Post-Hearing Submission at 2.

<sup>74</sup> Testimony of K. Balmer at hearing.

<sup>75</sup> Exs. LL and MM.

modifications that corrected the typographical errors and included the punctuation and conjunctions. The modified version of these rules does not change the substance of the standards that were originally proposed, but groups them in an easier-to-follow and more readable format. In addition, the modification uses the phrase “a teacher of young children in the primary grades” in items (E) – (I) of the Early Childhood rule, and the phrase “a teacher of children in kindergarten through grade 6” in items (C) – (G) of the Elementary Education rule, as did the proposed rules as originally published. The Board thus corrected the language contained in the earlier version of the modification that was handed out at the hearing, which referred to “candidates for licensure” as a teacher of early childhood education or elementary education.

72. The proposed reading preparation rules underscore the need for teachers of young children in the primary grades and children in kindergarten through grade 6 to have knowledge of the foundations of reading processes, development, and instruction; have knowledge of and the ability to use a wide range of instructional practices and curriculum materials to support reading instruction; have knowledge of and the ability to use a variety of assessment tools and practices to plan and evaluate effective reading instruction; have the ability to create a literate and motivating environment that fosters reading by integrating foundational knowledge, use of instructional practices, approaches and methods, curriculum materials, and the appropriate use of assessments; and demonstrate a view of professional development as a career-long effort and responsibility. The proposed rule includes a detailed list of topics under each of the above headings.

73. Dr. Deborah Dillon, a research professor at the University of Minnesota and task force member, spoke at the hearing in support of the proposed reading standards. She noted that the new standards were drafted using national standards issued by the International Reading Association and the National Board for Professional Teaching Standards, and noted that the task force also reviewed research findings and reading standards developed in other states. She believes that the proposed standards will be a powerful agent for change, and noted that teachers and college representatives are working together to revise reading coursework to better prepare teachers using the proposed standards and the latest research findings. Dr. Dillon also introduced letters from the Minnesota Association of Colleges for Teacher Education, the Minnesota Academy of Reading, the Minnesota Reading Association, the Minnesota Reading License Coalition, the Minnesota Literacy Teacher Educators Group, and Hamline University initial licensure faculty expressing support for the proposed reading standards.<sup>76</sup>

74. Susan Thomson, a parent advocate, reading tutor, and task force member, testified in support of all of the proposed reading rules. She asserted that the proposed reading rules are critically needed to improve the content and rigor of the reading curriculum offered to teacher candidates. Based upon her review of reading syllabi on file with the Board, she believes that too little course time is required of teacher candidates to learn how to teach reading. She emphasized that studies have found that beginning teachers often feel unprepared to teach reading, particularly to students from diverse backgrounds or those learning English as a second language. She asserted

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<sup>76</sup> Testimony of D. Dillon; Ex. QQ.

that the detail and specificity in the proposed rules is needed to ensure depth in the reading curriculum and consistent content in teacher preparation programs.<sup>77</sup>

75. Christine Stern, President of the June Stern Family Foundation for Children with Dyslexia, submitted a written comment in which she noted her agreement with the testimony of Dr. Dillon and Ms. Thomson and supported strengthening the qualifications for teachers of reading. Ms. Stern indicated that the teaching criteria in the proposed rules are consistent with the guidelines of the National Reading Panel and involve scientifically proven strategies that will help all children and are vital for those who struggle with reading. She stated that elementary teachers who receive scholarships from the Foundation frequently remark that they did not receive adequate instruction in college to prepare them to teach reading to class of diverse learners.

76. Hannah Tolles, a teacher trainer, expressed support for the proposed rules relating to preparation for teaching reading, particularly the standards set forth in part 8710.3200. She indicated that many teachers in her training classes have said that they felt unprepared to teach reading and have had to seek out additional training to acquire the knowledge and practice they need. Ms. Tolles stated that the proposed standards reflect important findings in current research about what teachers need to know in order to teach children how to read, and will make teachers better prepared to serve their students. She believes that all students will benefit from better teacher preparation in the area of reading.

77. Jeanie Munsterman, an Elementary Teacher in St. James, submitted a written comment supporting the reading preparation rules. She indicated that she obtained additional training after years of teaching in order to teach reading effectively to all of her students, and described the successes experienced by several of her struggling students after she used her new skills. She indicated that she regrets that she did not receive this reading instruction years ago in her college teacher preparation classes, and urged adoption of the proposed rules so that students will receive high quality reading instruction by highly trained teachers.

78. C. Wilson Anderson, Jr., President of the Upper Midwest Branch of the International Dyslexia Association, filed a letter after the hearing supporting the changes proposed by the Board to part 8710.3200, subpart 3 (A) through (F). The Association stressed the importance of teaching all children to read and asserted that 1 child in 5 will experience significant difficulties learning to read sufficiently well to use reading for learning and for enjoyment. The Association noted that research shows that early intervention programs that combine instruction in the essential components of reading provided by well-trained teachers can increase the achievement of at-risk students to average reading levels, and pointed out that effective instruction in the early years is much more cost-effective than waiting until children are older or reach adulthood. The Association indicated that many teachers have a gap in their knowledge of effective reading instruction and believes it is important to hold teachers to high expectations regarding their knowledge of the science of reading and reading instruction. Accordingly, the Association supports the proposed changes requiring teacher preparation program reforms to include specific coursework in research-based reading instruction with greater consistency across the state.

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<sup>77</sup> Testimony of S. Thomson; Ex. PP.

79. The Administrative Law Judge concludes that the Board has shown that the proposed rules are needed and reasonable to ensure that teachers of young children are better prepared to teach reading to a diverse population, administer assessments, and design appropriate interventions where necessary. The formatting modifications to these rules proposed by the Board are not substantive in nature and do not result in a rule that is substantially different from the rule as originally proposed.

**B. Content-Specific Licensure**

**Part 8710.4000 – Teachers of Adult Basic Education**

**Part 8710.4050 – Teachers of Agricultural Education**

**Part 8710.4200 – Teachers of Business**

**Part 8710.4250 – Teachers of Communication Arts and Literature**

**Part 8710.4450 – Teachers of Family and Consumer Sciences**

**Part 8710.4500 – Teachers of Health**

**Part 8710.4550 – Library Media Specialists**

**Part 8710.4600 – Teachers of Mathematics**

**Part 8710.4650 – Teachers of Vocal Music and of Instrumental Music**

**Part 8710.4700 – Teachers of Physical Education**

**Part 8710.4750 – Teachers of Science**

**Part 8710.4800 – Teachers of Social Studies**

**Part 8710.4850 – Teachers of Technology**

**Part 8710.4900 – Teachers of Visual Arts**

80. Under the proposed rules, existing language in each of the above rules relating to reading preparation is deleted, and new language is proposed for adoption requiring an understanding of the content and methods for teaching reading, followed by a more detailed identification of required topics. Although there are some similarities in the proposed rule language between the various licensure rules, there also are differences between them. The SONAR indicates that the language in each proposed rule was tailored to the specific needs and particularities of the discipline. The SONAR further states that the revisions were based on input from stakeholders as well as reviews of literature in each area conducted by task force members.<sup>78</sup>

81. In the SONAR, the Board indicated that it believes that content teachers “must have foundational knowledge and skills in reading, as reading is central to success in each of these content areas.” In its view, the current reading preparation standard contained in the content-specific licensure rules is insufficient to prepare these teachers for this task, and greater depth and clarity is needed. The Board emphasized that the proposed rules, which will become effective on September 1, 2010, are not intended to turn content teachers into reading teachers. In addition, the Board indicated that it anticipates that the proposed reading standards will be covered in the 2-3-credit course typically required in each content area which is devoted to “reading in the

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<sup>78</sup> SONAR at 22.

content area,” and should not take additional time away from preparation in the specific content area.<sup>79</sup>

82. Sandra Gundlach, Director of Management Services for the Minnesota School Boards Association, submitted a written comment regarding the reading preparation requirements. The MSBA acknowledged that new teachers would perhaps be better prepared to help their students understand the content being conveyed under the proposed content-specific standards. However, the MSBA contended that the requirement would likely cause problems for smaller, rural school districts and a growing number of larger districts who need flexibility to staff their programs. Susan Kuseske, a Family and Consumer Sciences in Sauk Centre, objected to the increased requirements for reading strategies. She questioned whether the rule changes have been shown to improve students’ ability to do their school work or become contributing members of society and asserted that changes should only be proposed after lengthy observation and involvement in the classroom.

83. As noted above, several individuals and organizations, including the Upper Midwest Branch of the International Dyslexia Association, Dr. Dillon, Ms. Thomson, Ms. Stern, and others, expressed strong support for the proposed reading standards. In addition, the proposed rules reflect the work of a task force that encompassed representatives of diverse interests and organizations.

84. The Administrative Law Judge concludes that the Board has demonstrated that the proposed rules are needed and reasonable to ensure that content teachers have the requisite foundational knowledge and skills in reading. It is intended that the new standards will be covered in courses that focus on reading in the content area which are already required in most preparation programs. The proposed rules fall well within the Board’s statutory authority to license public school teachers and design teacher preparation programs.

85. It is noted that a typographical error appears in Subpart 5 of part 8710.4500. The effective date referenced in that rule should be corrected to refer to September 1, 2010, not 2001.

**Part 8710.3310 – Middle Level Endorsement License for Teachers of  
Communication Arts and Literature**

**Part 8710.3320 – Middle Level Endorsement License for Teachers of  
Mathematics**

**Part 8710.3330 – Middle Level Endorsement License for Teachers of  
Social Studies**

**Part 8710.3340 – Middle Level Endorsement License for Teachers of  
General Science**

86. The proposed reading standards for those seeking endorsement in the above areas are contained in Subpart 3(D) of each rule. In each instance, the proposed rules require that teachers must understand the content and methods for teaching reading, including knowledge of reading processes and instruction and the ability to use

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<sup>79</sup> SONAR at 21-22; Board’s May 21, 2009, Post-Hearing Submission at 2.

a wide range of instructional methods. The topics detailed under each of these main areas vary from rule to rule.

87. In the SONAR, the Board noted that each of the proposed middle level endorsement licenses for grades 5-8 has a correlating 5-12 or 9-12 licensure field, and stated that it believes that the reading standards should be the same within a content area for both the 5-8 rule and the 5-12 or 9-12 content area rules. As a result, the proposed rule language mirrors the language found in the correlating 5-12 or 9-12 content area rule.<sup>80</sup>

88. The proposed reading standards in these rules did not generate controversy. The Administrative Law Judge finds that the Board has demonstrated that these provisions are both needed and reasonable to ensure adequate reading preparation in each of the middle level endorsement areas

## **C. Reading Endorsements**

### **Part 8710.4725 – Teachers of Reading**

89. In this rulemaking proceeding, the Board is proposing several changes to the current endorsement. First, the Board proposes to modify subpart 1 of the rule to recognize that nothing prevents teachers of English as a second language from providing reading instruction to students they are licensed to teach. The SONAR indicates that this modification is intended to clarify that the endorsement is not required for such teachers. In the Board's view, teachers of English as a second language should be treated similarly to elementary teachers teaching reading in a self-contained classroom and special education teachers teaching in their licensure areas (both of which are already mentioned in subpart 1).<sup>81</sup> Second, the proposed rules would modify subpart 2 to make it clear that teachers of English as a second language are eligible to earn the reading endorsement. Third, the subject matter standards set forth in subpart 3 are modified in accordance with the reading standards proposed in the other rules. Finally, an effective date of September 1, 2010, is proposed. The Board contends that there was widespread consensus among stakeholders and members of the task force in support of these proposed changes.

90. In the SONAR, the Board noted that, although the scope of the Teacher of Reading endorsement is K-12, the endorsement is currently required only for teachers in grades 7-12 who work in a targeted assignment focusing on reading (for example, remedial reading). The task force recommended that the endorsement be required for teachers in all grades (beyond 7-12) in targeted reading settings, thereby requiring Title I reading teachers to have this endorsement. The SONAR states without further explanation that the Board did not move forward with this recommendation.<sup>82</sup>

91. No one opposed this portion of the proposed rules. The Board has demonstrated that the proposed modifications to part 8710.4725 are needed and reasonable.

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<sup>80</sup> SONAR at 24.

<sup>81</sup> SONAR at 24.

<sup>82</sup> SONAR at 25.

## **Part 8710.4925 – Reading Leader**

92. This portion of the proposed rules adds a new endorsement, entitled “Reading Leader.” According to the SONAR, this endorsement is intended for teachers who have district-wide responsibilities (as opposed to the Teacher of Reading endorsement, which is intended for teachers who have direct student contact at the site level). The SONAR indicates that this rule was recommended by the task force. While the “Reading Leader” endorsement is not required for any teacher, the Board believes that a substantial number of teachers will pursue this option.<sup>83</sup>

93. For the most part, the language of the new Reading Leader rule is similar to that of the proposed rule relating to the Teacher of Reading endorsement. Subpart 1 states that a reading leader is authorized to “facilitate and provide site-based or districtwide leadership” for K-12 student instruction “that is designed to develop reading skills, strategies, and comprehension” and “provide assistance to teachers who have responsibility for providing reading instruction.” Subpart 1 also clarifies that elementary teachers, special education teachers, and teachers of English as a second language are not required to earn this endorsement to fulfill their duties under those licenses. Subpart 2 includes licensure requirements similar to those specified for the Teacher of Reading endorsement and includes the Teacher of Reading endorsement as a prerequisite for earning the Reading Leader endorsement. Subpart 3 incorporates subject matter standards for reading preparation similar to those in the other licensure rules. Subpart 4 provides for license issuance and renewal, and Subpart 5 sets an effective date of September 1, 2010.

94. The Minnesota School Boards Association opposed the establishment of the new Reading Leader endorsement. The MSBA acknowledged that the proposed rule does not include a requirement that school districts must employ a Reading Leader, but believes that it is likely that future attempts will be made to impose such a requirement. The MSBA asserted that most school districts are reducing the number of existing administrators and teachers they employ due to insufficient funding, and the problem is particularly great for small, rural districts.

95. The Administrative Law Judge concludes that the Board has shown that the new Reading Leader endorsement is needed and reasonable, and within its authority to regulate the licensure of public school teachers. School districts are not required under the proposed rules to employ a Reading Leader, and the concerns expressed by the MSBA are merely speculative at this point.

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<sup>83</sup> *Id.*

### **III. Technology-Related Issues**

96. The Board convened a task force in March 2007 to conduct an analysis of technology-related issues, including preparation, support, and training. In the SONAR, the Board indicated that the task force recommended that no changes be made in several licensure areas, but did suggest modifications to the licensure rules relating to Standards of Effective Practice, Teachers of Keyboarding for Computer Applications, Library Media Specialists, and license renewal requirements.<sup>84</sup> After receiving the task force recommendations, the Board proposed a number of changes be made to these rules. These changes are discussed below.

#### **Part 8710.2000 – Standards of Effective Practice for Teachers**

97. This portion of the Board's rules sets forth standards that must be satisfied by candidates for teacher licensure in a teacher preparation program. The proposed rules would amend the current rule to incorporate several references to the importance of understanding and applying technology resources. For example, the proposed amendment to subpart 3 (student learning) would specify that teachers must, among other things, "demonstrate knowledge and understanding of concepts related to technology and student learning;" the amendment to subpart 4 (diverse learners) would require that teachers "identify and apply technology resources to enable and empower learners with diverse backgrounds, characteristics, and abilities;" the amendment to subpart 5 (instructional strategies) would specify that teachers must "develop, implement, and evaluate lesson plans that include methods and strategies to maximize learning that incorporate a wide variety of materials and technology resources;" the amendment to subpart 7 (communication) would require teachers to "plan for the management of technology resources within the context of learning activities and develop strategies to manage student learning in a technology-integrated environment;" the amendment to subpart 8 (planning instruction) would require that teachers "plan for the management of technology resources within the context of learning activities and develop strategies to manage student learning in a technology-integrated environment;" the amendment to subpart 9 (assessment) would specify that teachers must "use technology resources to collect and analyze data, interpret results, and communicate findings to improve instructional practice and maximize student learning;" the amendment to subpart 10 (reflection and professional development) states that teachers must "understand the role of continuous development in technology knowledge and skills representative of technology applications for education;" and the amendment to subpart 11 (collaboration, ethics, and relationships) would require that teachers "understand the social, ethical, legal, and human issues surrounding the use of information and technology in prekindergarten through grade 12 schools and apply that understanding in practice." These proposed rules would take effect on September 1, 2010.

98. In the SONAR, the Board indicated that it agreed with the task force recommendation to reference technology more clearly in the Standards of Effective Practice in order to emphasize that "[a]ll teachers, regardless of what age or subject matter they are teaching, must be prepared to embed and utilize technology effectively in the classroom." The Board stated that the standards proposed to be added to

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<sup>84</sup> SONAR at 27-28.

subparts 3-5 and 8-11 were adapted from national standards drafted by the International Society for Technology in Education. The SONAR further noted that there was no controversy regarding these proposed changes.<sup>85</sup> The Board also proposed other modifications to this rule to eliminate redundant language and update language.

99. Greg Utecht, a member of the task force and Coordinator of Technology, Information, and Media Services for the Lakeville Area Public Schools, expressed support for the proposed modifications to this part of the rules. He asserted that it is difficult to find any mention of technology in the current version of the rule, and contended that integrating technology learning into content learning is consistent with best practices.<sup>86</sup> The Minnesota Department of Education also noted that it strongly supports more technology preparation for all teachers given the increasing role of technology in our society and the use of technology in schools across all disciplines.<sup>87</sup>

100. Sandra Gundlach, Director of Management Services for the Minnesota School Boards Association, submitted a comment indicating that the MSBA supports the proposal to more clearly articulate the technology-related standards in each of the licensure program areas addressed in part 8710.2000 and the need to modify the existing language relating to communication.

101. The Board has shown that part 8710.2000, as proposed, is needed and reasonable to ensure that all teacher candidates receive training regarding the use of technology in their classes.

### **Part 8710.4525 – Teachers of Computer, Keyboarding and Related Technology Applications**

102. Most of the debate during this rulemaking proceeding was spurred by the Board's proposed amendments to this rule provision. In the SONAR, the Board noted that the "keyboarding for computer applications" endorsement was created in 2003 to respond to a need for more teachers to teach skills to younger students. It indicated that this endorsement has been problematic because the title is confusing and misleading; the scope of practice and standards contained in the current rule do not reflect the actual duties of these teachers and do not allow for the types of duties they should perform in the future; and some stakeholders have argued that the current scope (K-8) is too limiting and the scope should be expanded to grades K-12.<sup>88</sup>

103. In this rulemaking proceeding, the Board proposes to change the title of the endorsement to "Teachers of Computer, Keyboarding, and Related Technology" to better describe the actual role and function of the endorsement. The Department of Education, the Minnesota School Boards Association, and others commenting on the proposed rules expressed support for this change in title. The Board also proposes to change the Scope of Practice set forth in subpart 1 to better describe the intent of the endorsement, and modify the subject matter standards set forth in subpart 3 to incorporate a substantial number of modifications. The SONAR indicates that the latter changes are based upon the recommended language of the task force, whose

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<sup>85</sup> SONAR at 29, citing *National Educational Technology Standards for Teachers: Preparing Teachers to Use Technology* (International Society for Technology in Education 2002), [www.iste.org](http://www.iste.org).

<sup>86</sup> Testimony of G. Utecht; Ex. SS.

<sup>87</sup> Testimony of J. Melick; Ex. TT.

<sup>88</sup> SONAR at 29-30.

members relied upon research and professional understanding of best practices in this area.<sup>89</sup>

104. The Board also proposes to expand the scope of the endorsement from grades K-8 to grades K-12. This change was not recommended by the task force but was adopted by the Board. According to the SONAR, the topic received a significant amount of discussion within the task force, and several members suggested that the scope be expanded to K-12 in order to provide opportunities for secondary teachers to expand into these roles. In the SONAR, the Board noted that, under the current structure, there are only very limited options for licensed teachers to teach a computer-related assignment. To do so, they would need to earn a Business license; earn a Technology license (previously called an Industrial Arts license); earn a Communications Technology Careers license (previously called a Vocational Education license); or teach under a variance allowing teaching outside of the individual's licensure field for up to three years. The Board provided the following explanation for the proposed change in its SONAR:

With the growth in demand for computer-related courses and the need to provide students with as many opportunities as possible to access this knowledge and experience, the Board of Teaching believes that there must be another option for teachers to be able to teach in these areas. Both the Business and Technology licenses cover vastly more than computer-related topics, and the Board believes that it is neither practical nor realistic to expect a licensed teacher to earn one of these licenses if their only objective is to teach computer-related courses. The endorsement is designed to be a shorter course of study and targets the skills and knowledge needed for teachers to teach computer-related courses. . . . [T]he Board maintains that the growing need for more coursework for students in this area, coupled with the limiting nature of our current structure, provides rationale that this change is both needed and reasonable.<sup>90</sup>

105. During the hearing, witnesses appearing on behalf of the Board emphasized that the demand for technology-related courses is growing, and the Board anticipates a steady increase in their number. In addition to concern about access to technology-related courses, the Board witnesses expressed concern that the substance required for the endorsement in the current rule is not sufficient. Although Business teachers will continue to be critical, the Board witnesses believe that there needs to be other options for people to teach technology-related courses, and assert that the technology standards can be learned by teachers without having to learn all of the other content required for business licensure (such as accounting and finance).

106. Cara Hagen, an Education Technology Coordinator at TIES and a member of the technology-related task force, was one of the Board's witnesses who testified in support of the proposed rule. She stressed the need for all teachers to integrate technology throughout the curriculum and across grade levels and indicated that there is a need for preparation beyond the level identified by the current version of the rule.

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<sup>89</sup> SONAR at 31.

<sup>90</sup> SONAR at 30.

Although the task force could not reach consensus about changing the endorsement from a K-8 scope to a K-12 scope, she supported that proposed modification as well. She believes that students will benefit by affording teachers at all grade levels the opportunity to attain licensure in the area of technology with an endorsement instead of a full license.<sup>91</sup>

107. Task Force Member Greg Utecht also testified in favor of this portion of the proposed rules. He asserted that continuing to relegate technology or one or a few disciplines would be counter to the clear trend integrating technology into everything we do. In his view, the proposed rules will help teachers who hold the endorsement lead technology efforts in their schools and facilitate the integration of technology across multiple disciplines. He further noted that the colleges that now offer this endorsement have indicated that they support the expansion to K-12.<sup>92</sup>

108. The Department of Education noted that it supports the change in scope from K-8 to K-12. The Department believes that the proposed rule “allows districts greater flexibility to embed technology education across the curriculum and allows more effective integration of technology into all learning environments.”<sup>93</sup>

109. The Minnesota School Boards Association supported the expansion in the scope of practice to K-12. The Association noted that, “[i]n the case of technology, school districts would gain additional options for staffing their respective technology programs, and students would benefit from being taught by teachers who use technology more effectively, provided colleges and universities can provide the quality learning opportunities teachers need.”

110. Dr. Thomas J. Reinartz, Jr., an Instructor in Learning Technologies at the University of Minnesota and an English/Language Arts teacher at Rosemount High School, submitted a written comment expressing support for the expansion of the scope of the endorsement. Dr. Reinartz indicated that he would like to become certified to teach an Advanced Placement Computer Science at the high school beyond the three-year variance he has obtained, but the current requirements for certification are excessive and largely irrelevant to the content of that course. He stated that the course largely focuses on Java, a computer programming language that is not addressed in any of the three current certification areas (math, business, and industrial technology), and he does not wish to spend time and money on coursework in areas that are irrelevant to the content of the course he wishes to teach. He urged adoption of the proposed rules as a first step and consideration of other changes in the future.

111. Numerous individuals and organizations objected to this portion of the proposed rules. During the hearing, Dr. Robert H. Meyer, Executive Director of Minnesota Business Educators Inc., testified that the members of MBEI are opposed to the proposed change in the scope of the endorsement. Mr. Meyer noted that the task force had recommended that the endorsement remain K-8 and questioned why the Board would propose the change. In his view, the proposed rule will dilute instructor knowledge and affect the depth of knowledge acquired by students. He contended that the proposed rule is not necessary because there is more than an ample supply of

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<sup>91</sup> Testimony of C. Hagen; Ex. RR.

<sup>92</sup> Testimony of G. Utecht; Ex. SS.

<sup>93</sup> Testimony of J. Melick; Ex. TT.

highly-qualified business educators in Minnesota. Mr. Meyer asserted that business education teachers have had to keep up-to-date with rapid changes in technology and are uniquely qualified to teach computer technology courses.<sup>94</sup> Jennifer Cherry, a Teacher Education Coordinator and Teaching Specialist from the University of Minnesota, also opposed the expansion of the scope of the endorsement to K-12. She asserted that, by the time a student reaches high school, the focus of computer technology courses is employment preparation, and contended that licensed business educators are the career and technical education teachers who are fully prepared to teach the content in these courses. She maintained that the proposed rules would potentially lead to a loss in the rigor of high school computer technology courses and an inability for high school students to obtain college credit for such courses. Ms. Cherry also argued that removing the computer technology content from the business domain would weaken the entire career and technical education curriculum and might affect the success of at-risk students.<sup>95</sup>

112. Judy Lambrecht, a Professor at the University of Minnesota in the area of business teacher education, David Braaten, a high school business teacher, and Molly Wickam, a faculty member at Bethel, also testified in opposition to the proposal to expand the scope of the endorsement to K-12. Ms. Lambrecht served on the task force, which she indicated focused on the K-8 level and only briefly discussed whether there should be a second license for those teaching computing classes at the high school level. Ultimately, the task force decided that no change should be made regarding the scope. Ms. Lambrecht stated that it is impossible to teach computing at the secondary level without reference to content areas, which generally are business-related. Ms. Wickam stated that allowing others to teach at the high school level will water down the curriculum because they do not have the same skill set as Business teachers. Ms. Lambrecht and Mr. Braaten questioned whether those lacking business training have the requisite depth of knowledge to teach technology-related courses. They also expressed concern that school reimbursement through federal Perkins funds may be affected if those lacking career and technical education (CTE) training teach technology-related courses.<sup>96</sup> Business education teachers Vicki Kapaun, Cynthia Nolan, Ann Pagel, Lynn M. Falk, Deb Stueve, and Michele MacLeod filed letters echoing this concern.

113. Rachel Cudworth, a University of Minnesota student in business education, also opposed the amendments to part 8710.4525. She stated that business teachers are taught the necessary methods for teaching career and technical education during the licensure process, and expressed concern that the endorsement would lessen the quality of the education students receive by allowing unprepared teachers to lead these classes.<sup>97</sup> D.J. Dahl, a business educator who teaches computer classes in community college and adult basic education in the St. Paul Public Schools, testified that it is important that stand-alone classes are taught by highly-qualified experts, and urged that the proposed rules not expand the scope to K-12.<sup>98</sup> Rose Pettit, a business educator at Hopkins High School, supported a K-8 scope but opposed expansion to grades 9-12.

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<sup>94</sup> Testimony of R. Meyer; Public Ex. 1.

<sup>95</sup> Testimony of J. Cherry; Public Ex. 2.

<sup>96</sup> Testimony of J. Lambrecht.

<sup>97</sup> Testimony of R. Cudworth; Public Ex. 3.

<sup>98</sup> Testimony of D.J. Dahl.

She asserted that the proposed rules would dilute the quality of high school business education and reduce the depth of knowledge students obtain.<sup>99</sup>

114. Prior to the hearing and during the post-hearing comment period, the Administrative Law Judge also received many written comments opposing the expanded scope of the endorsement to K-12. Mary Flesberg, President of Minnesota Business Educators Inc., wrote on behalf of MBEI's board and membership to urge that the proposed change be reconsidered to include only the K-8 level. MBEI warned that expanding the endorsement to the 9-12 level will lower the standards of education for high school students and cause them to inadequately prepared for higher education or work. In addition to testifying at the hearing, Dr. Meyer, Executive Director of MBEI, submitted a letter in which he asserted that Minnesota business educators are uniquely qualified to teach technology and cautioned that the proposed rules have the potential to weaken the entire high school business education curriculum.

115. A large number of current and prospective teachers who filed comments opposing the proposed rule emphasized the high quality of the training provided to those in the business education field. They asserted that business educators not only have knowledge of technology but also are trained in the application of technology and proficiency in its use, and expressed concern that the proposal would lower the quality and depth of knowledge of those teaching these skills at the high school level. Many of them maintained that there is an adequate supply of highly-qualified business educators in Minnesota, and urged that the endorsement be limited to K-8. Some commented that the proposed rule does not take into consideration the higher level of standards acquired at the secondary level in the use of technology as preparation for advanced education, and questioned why the rule does not make any distinction between K-8 and 9-12 teaching levels. Several warned that the proposed modification would adversely affect student achievement.<sup>100</sup>

116. Denita Clapp, Technology Integrationist/Staff Trainer for the Moorhead Public Schools and task force member, indicated that the majority recommendation from the task force was to leave the endorsement as a K-8 endorsement. She asserted that, in reality, a K-6 endorsement would be most appropriate. She contended that extending the endorsement to grades 9-12 would not meet the needs of high school students or prepare them for the highly competitive workforce and would risk diluting the curriculum and lowering expectations for students and teachers.

117. Laura Jaroscak, a parent, also filed a written comment objecting to the proposal to extend the endorsement from K-8 to K-12 without the critical training included in a business education teacher licensure program. She noted that she strongly disagreed with the apparent assumption in the proposed rules that specific methodologies are not necessary to teach computer applications, computer

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<sup>99</sup> Testimony of R. Pettit.

<sup>100</sup> See, e.g., letter comments from Brenda Kellen, Vicki Kapaun, John Kostynick, Mary Toner, Candace Lee, Diane K. Nelson, Becky Ehnert, Leah Lencowski, Ann Pagel, Cynthia Nolan, Pat Kittock, Richard Osman, Charlotte Bergstrom, Angela M. Hartman, Lynn M. Falk, Lois A. Cox, Julie Wolner, Valerie Bradt, Tiffany McGrath, Danielle Dahl, Rachel Cudworth, Denita Clapp, Michael J. Kaluza, Mary Jane Patchin, Kristin Cherveney, Kara Mueller, Joyce Olson, Donna J. Krueger, April Johnson, Lori A. Raebel, Sheryl Krengel, Matt Askegaard, Jana Peterson, Peggy Bausman, Lisa J. Rutt, Michele MacLeod, Molly J. Wickam, Susan Kuseske, Polly Johnson, Sheryl A. Petersen, Jennifer Reinhardt, Robert Murray, Kathi Salvevold, and Terri J. Martin.

keyboarding, multimedia, etc., and that there is not need to link these skills to the business world. She asserted that the proposed change is a huge step backward for Minnesota public education and will lead to an erosion of experts teaching children in Minnesota schools.

118. During the post-hearing comment period, the Board responded to several of the concerns raised by those opposing the proposed rules. The Board pointed out that the Teacher of Business license is a broad license and those holding such a license are authorized to teach many different types of courses, including business organization and management, sales and marketing, finance, accounting, business information systems, economics, international business, business law, workplace skills, and other topics, in addition to technology-related courses. The Board indicated that it does not dispute the idea that Business teachers are well prepared to teach technology-related courses as a function of their license, or that Business teachers provide a unique integration of technology into the content they teach. However, the Board noted that it does not agree that only Business teachers may properly teach technology-related courses:

The Board of Teaching does dispute, however, the notion that Business teachers are the only pool of teachers who can or should teach technology-related courses. The integration of technology by a Business teacher may look different from the integration of technology by a licensed Math teacher, but the Board of Teaching believes that there are rich underpinnings of content that both teachers can bring to technology-related coursework. The specific applications of the technology may be different, but it is not reasonable to suggest that students cannot learn technology-related skills and concepts outside of a business-focused setting.<sup>101</sup>

The Board went on to emphasize that the proposed Scope of Practice for the expanded endorsement states that teachers with the endorsement may provide K-12 students with “instruction that is designed to teach computer applications, including general productivity applications, graphics, imaging, multimedia, video and animation, audio, and digital communications including but not limited to the Internet and electronic communications and computer keyboarding” and may “lead, collaborate, and consult with other classroom teachers for the purpose of integrating technology learning into content area curriculum.” The Board contended that preparation for these teachers under the proposed rule would sufficiently prepare them to teach technology-related courses. The Board also maintained that the culture of on-going professional development and continual growth is not unique to Business teachers, but is found across all fields of licensure.<sup>102</sup>

119. In response to numerous comments stating that the proposed rule required only knowledge and understanding of technology, the Board pointed out that the subject matter standard set forth in subpart 3(A) states that a teacher of computer, keyboarding,

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<sup>101</sup> Board’s May 13, 2009, Post-Hearing Submission at 3.

<sup>102</sup> *Id.*

and related technology applications “understands *and applies*” the topics identified in the rule.<sup>103</sup>

120. In its initial post-hearing submission, the Board also addressed the comments by Dr. Meyer and others<sup>104</sup> asserting that there is no shortage of Business teachers to teach technology-related courses in Minnesota schools and Business teachers will continue to meet the needs of students in the future. The Board indicated that it did not cite technology-related courses as a current shortage area. However, the Board asserted that it has the responsibility to analyze policy options to address the needs of our schools and students and maintained that the Board may properly consider supply and demand issues as it seeks to fulfill its vision “to maintain high licensure standards while providing flexibility in the licensing process to assure that public school students have fully licensed teachers.”<sup>105</sup>

121. The Board thereafter discussed the four approved Business licensure programs offered in Minnesota, the number of persons who completed such programs in 2007-2009 (44), the number of persons who earned a Business license through the Licensure via Portfolio option since 2007 (7), and the number of special permissions granted during the past three years to allow individuals to teach courses that require either a Business license or a Keyboarding endorsement. Several types of special permissions (such as variances, waivers, limited licenses, non-licensed community expert approvals, and non-renewable licenses) are available to school districts when they cannot find an appropriately-licensed teacher for a particular assignment or course. According to the chart provided in the Board’s initial response, with respect to courses that require a Business license, the Board granted 33 variances, 2 appeal variances, 1 discretionary variance, 2 waivers, 5 limited licenses, and 6 community expert approvals in 2005-2006; 39 variances, 2 discretionary variances, 5 limited licenses, 5 community expert approvals, and one non-renewable license in 2006-2007; and 31 variances, 1 appeal variance, 1 discretionary variance, 8 limited licenses, and 6 community expert approvals, and 4 non-renewable licenses in 2007-2008. With respect to courses that require a K-8 Keyboarding for Computer Applications endorsement, the Board granted 68 variances, 2 appeal variances, and 2 community expert approvals in 2005-2006; 55 variances, 1 appeal variance, 1 community expert approval, and 1 non-renewable license in 2006-2007; and 54 variances, 1 appeal variance, 10 limited licenses, 2 community expert approvals, and 2 non-renewable licenses in 2007-2008. In the Board’s view, this information demonstrates that there is a need for additional licensed individuals in these areas. The Board asserted that, “[g]iven the increased attention over the last several years to technological literacy and competence, including significant initiatives at the Minnesota Department of Education, we believe that the demand for technology-related coursework will continue to increase in the coming years.” Moreover, the Board contends that “[t]aken all together, these considerations lead to a reasonable conclusion that it is appropriate to seek additional opportunities for teachers to be prepared to teach technology-related courses.”<sup>106</sup>

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<sup>103</sup> Board’s May 13, 2009, Post-Hearing Submission at 6.

<sup>104</sup> Similar concerns were raised by Molly Wickam, David Braaten, Vicki Kapaun, Ann Pagel, Michael J. Kaluza, Lori A. Raebel, Sheryl Krengel, Michele MacLeod, Polly Johnson, and Robert Murray.

<sup>105</sup> Board’s May 13, 2009, Submission at 3-4.

<sup>106</sup> *Id.* at 4-5.

122. The Board stressed in its post-hearing submissions that the options for licensed teachers to teach a technology-related assignment under the current rules are very limited, and it believes that it is not practical or reasonable to expect a licensed teacher to earn a 5-12 Business license, a 5-12 Technology license, or a Communications Technology Careers license if their objective is to teach technology-related courses. The Board maintained that the endorsement appropriately requires a shorter course of study and targets the skills and knowledge needed to teach technology-related courses. The Board continues to believe as a matter of policy that it is appropriate to expand the opportunity for licensed teachers to teach technology-related courses in addition to courses in their existing licensure field. The Board asserted that issues involving federal Perkins funding and potential impact on the courses offered by licensed Business teachers are of secondary importance.

123. In its initial post-hearing response, the Board indicated that it would consider a change to part 8710.4525 at its May 22, 2009 meeting. The minutes of the meeting available on the Board of Teaching website<sup>107</sup> indicates that the Board did, in fact, adopt that modification. The modification would include the following language at the end of subpart 2 of proposed part 8710.4525: “A teacher of computer, keyboarding, and related technology applications is limited to teaching in the scope of his or her base license(s).” The Board explained that this modification was proposed in response to the concern raised by some individuals that any teacher could add the endorsement, and it would be inappropriate for a K-6 teacher to add the endorsement and teach computer-related courses at the high school level (or vice versa). According to the Board, the modification will “still allow any licensed teacher to add the endorsement, but [will] limit its use to the scope of the base license(s). So the K-6 teacher could only use it in a K-6 setting, a 5-12 teacher could only use it in a 5-12 setting, etc.”<sup>108</sup>

124. After careful consideration, the Administrative Law Judge concludes that the Board has adequately demonstrated that part 8710.4525 is needed and reasonable. The Board has provided a rational explanation for its decision to increase the opportunity for licensed teachers to teach technology-related courses in addition to their existing licensure field and expand the scope of the endorsement to K-12. The Board has broad authority under Minn. Stat. § 122A.09, subds. 4 and 9, to adopt rules to license public school teachers and design teacher preparation programs. As noted above, an agency is legally entitled to make choices between possible approaches so long as its choice is rational<sup>109</sup> and is entitled to rely on policy preferences in support of a rule.<sup>110</sup> It is not the proper role of the Administrative Law Judge to invade the policy-making discretion of the agency and attempt to determine that another policy alternative presents the “best” approach.<sup>111</sup>

125. The modified language adopted by the Board on May 22, 2009, serves to clarify the rule and was proposed in response to the comments received during this

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<sup>107</sup> A link to the minutes of the May 22, 2009 Board of Teaching meeting is available at [http://education.state.mn.us/MDE/Teacher\\_Support/Board\\_of\\_Teaching/Meet\\_Minute\\_Agenda/index.html](http://education.state.mn.us/MDE/Teacher_Support/Board_of_Teaching/Meet_Minute_Agenda/index.html).

<sup>108</sup> Board's May 13, 2009, Post-hearing Submission at 5-6.

<sup>109</sup> See, e.g., *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

<sup>110</sup> *Mammenga v. Dept. of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

<sup>111</sup> *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

rulemaking proceeding. The Administrative Law Judge concludes that the modifications to the rule do not render it substantially different from the rule as originally proposed.

### **Part 8710.4550 – Library Media Specialists**

126. The proposed rules include a substantial number of amendments to the current rule governing Library Media Specialists. Although the task force recommended only minor changes, the Board determined that more modifications were needed due to the changes that were proposed to the keyboarding rule. In the SONAR, the Board indicated that the changes to the Scope of Practice were made to better describe the intent of the license, and the modifications to the subject matter standards reflect the recommendations of the task force and serve to update and clarify the role of the Library Media Specialist. The proposed amendments also include new language pertaining to reading preparation. The licensure requirements would take effect on September 1, 2010.<sup>112</sup>

127. The Minnesota Department of Education supported the clarification of the scope of practice of Library Media Specialists and the strengthening of the alignment between the subject matter standards and real world practice.<sup>113</sup> Mr. Utecht provided additional testimony in support of the proposed amendments. He indicated that colleges preparing people for the Library Media Specialist license long ago modified their programs to ensure these specialists obtained the skills necessary to teach technology, and urged that the rule amendments be adopted as further recognition of the integrated manner in which technology skills are learned.<sup>114</sup> The Minnesota School Boards Association also supported the proposed changes to this rule part and noted that the modifications would serve to update and clarify the license.<sup>115</sup>

128. The Administrative Law Judge concludes that the Board has demonstrated the need for and reasonableness of the proposed revisions to the Library Media Specialists rule.

### **Part 8710.7200 – Clock Hours; Requirements for Renewal of Professional Licenses**

129. This portion of the proposed rules adds a new requirement for renewal of teaching licenses that expire on June 30, 2012, and thereafter. The rule requires that applicants “include in their 125-clock hours instruction or other professional development activities that integrate technology effectively with student learning to increase engagement and student achievement.” The Board decided not to adopt the task force’s recommendation that all teachers obtain a minimum of 10 clock hours relating to technology within each five-year renewal period. The Board noted in the SONAR that it believes that a requirement relating to technology is appropriate but does not agree that the rule should require a specific number of hours. In the Board’s view, “the role of technology is central to student learning, and . . . it is appropriate to require that within each five-year renewal period, there is at least minimal training and

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<sup>112</sup> SONAR at 31.

<sup>113</sup> Testimony of J. Melick; Ex. TT.

<sup>114</sup> Testimony of G. Utecht; Ex. SS.

<sup>115</sup> Letter from S. Gundlach (April 23, 2009).

development in this area.” The Board asserted that the proposed rules is consistent with the core mission of education, and is both needed and reasonable.<sup>116</sup>

130. Greg Utecht and the Department of Education supported this requirement. Mr. Utecht stressed that the proposal does not prescribe the number of hours of training in technology or the means by which the training must be obtained, and contended that teachers and districts can easily work to satisfy the proposed rule. He also pointed out that technology is changing so quickly that the training requirement is needed to ensure that teachers remain up to date.<sup>117</sup>

131. The Minnesota School Boards Association urged that the technology-related clock-hour requirement be deleted from the proposed rules because school districts already provide technology-related learning opportunities for their teachers and are in a better position to know what their teachers need. The MSBA noted that this would be the fourth time the rule has been changed to include specific license renewal requirements and expressed concern that other requirements could be imposed in the future, further limiting a school district’s authority to determine based on local needs what staff development and other learning opportunities should be provided. Prior to adoption of the proposal, the MSBA urged that the Board determine who would provide and pay for the technology-related learning opportunities and whether continuing education providers would be required to demonstrate competency relative to the technology standards before offering training.

132. In its final post-hearing submission, the Board responded that Minn. Rules part 8710.7300 grants authority to local committees to review the clock hours submitted by teachers and determine if they are appropriate. The Board indicated that these committees do not approve professional development providers themselves. While many Minnesota school districts provide training to their staff, the Board noted that teachers would also be free to pursue opportunities outside their districts.

133. The Administrative Law Judge finds that the Board has shown that the proposed amendment to Part 8710.7200 is needed and reasonable to ensure that teachers receive at least minimal on-going training with respect to the use of technology to enhance student learning.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Board gave proper notice of the hearing in this matter. The Board has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.

1. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).

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<sup>116</sup> SONAR at 32.

<sup>117</sup> Testimony of G. Utecht; Ex. SS.

2. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4; and 14.50 (iii).

3. The amendments to the proposed rules suggested by the Board after publication of the proposed rules in the State Register are not substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.05, subd. 2, and 14.15, subd. 3.

4. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

5. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the proposed rules, as modified, be adopted.

Dated: June 23, 2009.

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Digitally Recorded; No Transcript Prepared.